

1 HONORABLE RONALD B. LEIGHTON
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 FRANK W. SCHNARRS,

11 Plaintiff,

12 v.

13 RUSHMORE LOAN MANAGEMENT,
14 et al.,

15 Defendants.

16 CASE NO. C16-5926RBL

17 ORDER OF DISMISSAL
18 WITHOUT PREJUDICE

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20 THIS MATTER is before the Court on Defendants' Motions to Dismiss [Dkt. #s 15 &
21 23]. The Motions were re-noted to allow Plaintiff Schnarrs to obtain counsel [Dkt. #29].
22 Schnarrs has since re-filed what appears to be the same request for a continuance, to a date
23 (February 1) which has already passed [Dkt. #31]. In the alternative, he seeks again dismissal
24 without prejudice.

25 The Court will not continue the pending motions again, and that request is DENIED.
26 Defendants ask the Court to treat Schnarrs' filings as a failure to respond to their motions and to
27 dismiss his claims with prejudice under Local Rule 7.

28 However, a plaintiff has the unilateral right to voluntarily dismiss his claims without
29 prejudice when the defendant has not answered or filed a motion for summary judgment. Fed. R.
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1 Civ. P. 41(a)(1)(A)(i). Where there is instead a pending motion to dismiss for failure to state a
2 claim, the plaintiff's voluntary dismissal effectively moots that motion, and the dismissal is
3 without prejudice. *See American Soccer Co., Inc. v. First Score Enterprises*, 187 F.3d 1108 (9th
4 Cir. 1999). The apparent prejudice to the defendants can be remedied by an award of costs when
5 and if the plaintiff re-files his claims. Fed. R. Civ. P. 41(d)(1).

6 The Court will treat Schnarrs' filing [Dkt. #31] as a notice of voluntary dismissal, and
7 this matter is **DISMISSED WITHOUT PREJUDICE**. The defendants' pending motions to
8 dismiss [Dkt. #s 15 & 23] are **DENIED** as moot.

9 IT IS SO ORDERED.

10 Dated this 16th day of February, 2017.

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12 Ronald B. Leighton

13 Ronald B. Leighton
United States District Judge

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